

REMARKS

In response to the Office Action mailed August 21, 2009, Applicant provides the following amendment and response. Upon entry of this Amendment, claims 1, 11, and 21 have been amended without adding new matter. Reconsideration of claims 1-30 in view of the amendments above and remarks below is respectfully requested.

In the Office Action, the Examiner has rejected claims 1, 11, 21 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim that which Applicant regards as the invention. In addition, claims 1-30 stand rejected under 35 U.S.C. § 103 as being unpatentable over Girardot, et al. (Efficient Representation and Streaming of XML Content Over the Internet Medium (hereinafter the “Girardot reference”) in view of U.S. Patent No. 6,340,977 issued to Lui, et al. (hereinafter the “Lui reference”).

By way of this amendment, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues, it is respectfully requested that the Examiner telephone the undersigned at (312) 577-7000 so that such issues may be resolved as expeditiously as possible.

Amendments to the Claims

Claims 1, 11, and 21 have been amended to provide direct antecedent basis to the term “the third party search engine” such that the preamble does not provide the introduction of this element in the body of the claim. Claims 1, 11, and 21 have been amended to clarify that the assembling occurs “without requiring prioritization.” Support for this amendment may be found throughout the application as filed including, for example, paragraphs [08], [62] to [65] and FIG. 10. In addition, claim 21 has been further amended to address a minor typographical error.

Claim Rejections - 35 U.S.C. §112

Claims 1, 11, and 21 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim that which Applicant regards as the invention. In particular, the Examiner suggests that the expression “the third party search engines” is without antecedent basis. Applicant notes that an antecedent appearance of the expression in question, “third party search engines,” is found in the claim’s preamble. To move prosecution forward, however, Applicant has amended claims 1, 11, and 21 to recite “third party search engines” as opposed to “the third party search engines.” Thus, it is respectfully submitted that the rejection is overcome and should be withdrawn.

Claim Rejections - 35 U.S.C. §103

Claims 1-30 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over the Girardot reference in view of the Lui reference. Applicant respectfully traverses this rejection because none of the cited references alone, or in combination, disclose, teach, or suggest, each and every element of the claims.

As a preliminary matter to clarify the record, Applicant notes that despite the contention in the previous Office Action, Applicant in no way acknowledged that Girardot randomly assembled fragments into a scramble document. Specifically, the Examiner stated “As per argument on pg. 12, that Girardot does not randomly assembl[e] the phrases into a scrambled document. Girardot includes encoding which involves fragmenting the document and applicant acknowledges (on pg. 10 of response 9/29/0[8]) that Girardot randomly assembl[es] the fragments into a scramble[d] document and at the destination reassemble[s] and reconstruct[s] the document structure. Thus, Girardot reads on claimed randomly assembling the phrases into a scrambled document.” (Office Action, pg. 2-3).

This is an unfortunate mischaracterization of the Applicant’s previous September 28, 2008 filing. The reference to Girardot on page 10 of the response states:

The examiner states that the Girardot article discloses randomly assembling the fragments into a scrambled document. However, this

cannot be the case, because the purpose of the Girardot system is to stream a document to a destination and then to reconstruct the document at the destination. If the fragments were randomly assembled at the source, it would not be possible to reconstruct the document at the destination. From the Girardot description in paragraph 3.1 (page 68, second column) it is clear that the client at the destination reconstructs the document structure (a document object model or DOM tree) from the structure information transmitted to it. From paragraph 2.3 (also on page 68, first column) it is clear that the streaming order is also prearranged. (Sept. 28, 2008 Office Action, pg. 10, emphasis added).

Indeed, Applicant contended that the Girardot reference did *not* randomly assembled the fragments into a scrambled document, the exact opposite characterization given this statement in the Office Action. Applicant's contention that the Girardot reference does not randomly assemble the phrases into a scrambled document has been consistent throughout prosecution. Further, as discussed below, the Girardot does not disclose and, indeed, teaches away from such a limitation by systematically assembling content.

The Girardot reference describes a particular approach to representing, and then streaming, XMP content via the Internet. The Girardot reference compresses, encodes, and streams XML structures and data via the Millau algorithm. Further, the Girardot reference labels, parses, fragments, and prioritizes the fragments. Each of the fragments is then streamed independent of any other fragments. Then, a receiving platform reconstructs the original document, as closely as possible given that the downloaded content is based on a prioritized basis. Thus, more important elements are downloaded first and then less important information can be delayed if the network is busy.

Claims 1, 11, and 21

In regard to claims 1, these references, even if combined, do not disclose, teach or otherwise suggest "generating a text stream from the digital content by stripping all graphic information and punctuation from the digital content; fragmenting the text stream...randomly assembling the phrases into a scrambled document such that the

scrambled document contains at least nearly all of the words and at least most of the phrases...and making the scrambled document available to third party search engines to permit indexing of the scrambled document that will result in an index” More particularly, the Girardot reference does not disclose stripping the graphical information and punctuation, contrary to the Examiner’s conclusory contention that the Girardot reference discloses “a method for distributing secure digital content that can be indexed by third party search engines, the method comprising: generating a text stream from the digital content by stripping all graphic information and punctuation from digital content; (pg. 67-abstract and pg. 68-3).” (Office Action, pg. 2-3). Indeed, the cited portions of the Girardot reference do not disclose any sort of stripping of particular information but instead disclose streaming data including multimedia content such as graphic information. The Girardot reference, therefore, teaches away from stripping graphical information by explicitly teaching a manner of streaming that information in a data stream. (Girardot, pg. 68, section 3.1).

In addition, the Girardot reference fails to disclose fragmenting the text stream into multi-word phrases that are each contained in the digital content, contrary to the Examiner’s conclusory supposition that the Girardot reference discloses “...fragmenting the text stream into [multi-word] phrases that are each contained in the digital content; (pg. 68-2.3 and pg. 70-5)” The Office Action states, further, “it is obvious that Girardot is fragmenting the documents is likely to include phrases and multiple-word phrases and as such are of digital content since this is all within the computing technology realm.” (Office Action pg. 3). However, the Girardot reference in no way discloses generating a text stream with certain information stripped and, thus, cannot disclose fragmenting such a text stream. Indeed, the Girardot reference does not contemplate such fragmenting of a text stream into multi-word phrases and does not disclose any sort of approach that would permit such fragmenting of the text stream into multi-word phrases. The portions of the Girardot reference to which the Examiner cites are directed to fragmenting data but the Girardot reference fragments the data into subtrees where each subtree may be transmitted in some

order predecided between the client and server. Further, the Girardot reference states: “breaking down of the XML document into fragments can be based upon priorities of individual nodes or subtrees of the document.” Thus, the Girardot reference fails to disclose fragmenting a text stream into multi-word phrases that are contained in the digital content. To provide the missing limitation, the Examiner cites to the Lui reference; however, as discussed below, the Lui reference does not disclose the missing elements.

Claim 1 also recites “randomly assembling the phrases into a scrambled document such that the scrambled document contains at least nearly all of the words and at least most of the phrases as are contained in the digital content.” To this end, the Office Action recites the claim limitation and cites to pages 68 and 69 of the Girardot without any further articulation of the reasons for why or how the Girardot reference suggests this limitation. MPEP 2141 notes that the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. As noted in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007), the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Accordingly, as required in order to establish a prima facie case of obviousness according to MPEP 2142, no articulated reason with some rational underpinning is provided to support that the Girardot reference teaches “randomly assembling the phrases into a scrambled document” as recited in claim 1. Indeed, as discussed above, the Girardot reference teaches away from this reference.

Further, MPEP 2142.02, Part VI requires that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. The Girardot reference, as a whole, teaches away from randomly assembling the phrases into a scrambled document, as recited in claim 1, by systematically assembling the fragments into a

previously determined order. More particularly, to the extent that the Girardot reference provides fragments of the data, the Girardot reference also provides for prioritizing those fragments so that those fragments are downloaded systematically, in a very specific order. Such a prioritization order of presentation is the opposite of “random” assembling of those phrases. Therefore, the Girardot reference fails to teach this limitation, and, indeed, when examined in context, teaches away from the limitations recited in claim 1.

In addition, claim 1 recites “making the scrambled document available to a third party search engines to permit indexing of the scrambled document that will result in an index that is comparable to an index that would result if the third party search engine indexed the digital content.” In regard to this element, the Examiner merely cites page 69 of the Girardot reference. However, it is not clear what this page contains that would be relevant to this limitation. More particular, the terms search engine, index, or indexing are not found in this page. Further, this page of the Girardot reference is directed to streaming, compression rates, and processing times. Therefore, this mere citation does not provide the required the prima facie case for obviousness as a prima facie case requires that each and every element must be found in the references when combined.

Turning to the Lui reference, which the Office Action cites to provide multi-word phrases, because the Examiner concedes that the Girardot reference “did not clearly discuss multi-word phrases.” However, the Lui reference also does not disclose the missing elements.

The Lui reference is directed to a cooperative help assistance (CHA) program that is executed by a client computer to assist the end user when using a given software application. To aid in these regards, and as disclosed at columns 30 and 31, the Lui reference provides a mechanism for providing commentary to the end user. This commentary can include a simple exclamation such as “good” or can comprise a more complicated statement or observation. The Lui reference suggests using a set of fragments that can be combined, for example, to express various “moods, intonations, or expressions that generally attempt to assemble or build variety and character into the presentation.” (Lui, col. 31, lines 16-18).

Thus, the Lui reference teaches assembling fragments according to proper grammatical expressions. More particularly, the Lui reference cannot assemble the fragments in a random manner or the resulting speech would be nonsense. Thus, the Lui reference cannot teach each and every elements of claim 1 missing from the Girardot reference. Further, in regard to the Examiner's contention that the Lui reference teaches fragmenting into multi-word phrases, the portions of the Lui reference cited by the Examiner are not directed to fragmenting a text stream, as recited by claim 1. The Office Action states:

The Commentary Set may also include categories that are organized phrases that can be assembled in run time into many different combinations to generate an extensive variety of phrases or expressions (col. 30, lines 55-60). Lui discloses the Commentary sentences and phrases can be created and rendered according to the selected data format by concatenating ASCII text or assembling sound fragments as in a play list or files (col. 30, lines 63-66). In addition, Lui discusses assembling these phrases at runtime has the distinct advantage of reducing data production and such assembling of phrases also contributes to the personality of the learning or interactive experience (col. 31, lines 18-22). The sentences and/or phrases disclosed in Lui obviously are made up of multiple (more than one) words and sentences/phrases consist of more than one phrase (col. 31, lines 38-40). Thus, [the Lui reference] reads on the claimed multi-word phrases. (Office Action, pg. 5-6).

However, having multi-word phrases does not teach fragmenting a text stream into multi-word phrases. Thus, even if the Lui reference does have multi-word phrases it does not disclose fragmenting such phrases.

In regard to claim 11, the cited references, even if combined, do not disclose, teach, or otherwise suggest an apparatus for distributing secure digital content that can be indexed by third parties with "a stripper that generates a text stream from the digital content by stripping all graphic information and punctuation from the digital content; means for fragmenting the test stream into multi-word phrases that are each contained in the digital content; a stream assembler that randomly assembles the phrases into a scrambled document...and means for making the scrambled document available to the third party search

engines to permit indexing of the scrambled document...” As discussed above at length, the references do not teach a stripper generating a text stream by stripping all graphic information, nor do the references teach a means for fragmenting the text stream into multi-word phrases. Further, the references also do not teach a stream assembler that randomly assembles the phrases into a scrambled document or a means for making the scrambled document available to third party search engines, as discussed above. Thus, the cited references do not teach each and every element of claim 11.

In regard to claim 21, the cited references, even if combined, do not disclose, teach, or otherwise suggest a computer program for distributing secure digital content that can be indexed by third party search engines including “program code for generating a text stream from the digital content by stripping all graphic information and punctuation from the digital content; program code for fragmenting the text stream into multi-word phrases that are each contained in the digital content; program code for randomly assembling the phrases into a scrambled document....and program code for making the scrambled document available to third party search engines...” As discussed above, the references do not teach generating a text stream from the digital content by stripping all graphic information and nor do the references teach fragmenting the text stream into multi-word phrases. Further, the references also do not teach randomly assembling the phrases into a scrambled document. The references also do not teach making the scrambled document available to third party search engines to permit indexing. Thus, for at least these reasons, the cited references do not teach each and every element of claim 21.

In an effort to further clarify the manner of assembling the phrases into a scrambled document, claim 1 has been amended to recite “randomly assembling, without requiring prioritization, the phrases into a scrambled document.” Similar amendments were made to independent claims 11 and 21. Since the purpose of the Girardot reference is to assemble the fragments according to their prioritization, the Girardot specifically teaches away from this element. Thus, for at least this additional reason, the cited references do not teach or

otherwise suggest the subject matter of the claims.

To establish a prima facie case of obviousness ... the prior art reference (or references when combined) must teach or suggest all the claim limitations. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j). For at least the reasons described above, the Giradot reference and the Lui reference fail to teach or suggest all of the claim limitations of independent claims 1, 11, and 21. Thus, it is respectfully submitted that these rejections are overcome and should be withdrawn.

Claims 2-10, 12-20, and 22-30

These claims are ultimately dependent upon one of the independent claims shown above to be allowable. Additional arguments for why these claims are allowable over the cited art are numerous. However, since the above arguments outline how the independent claims are allowable over the cited art, belaboring the numerous additional points of non-obviousness is not necessary at this time.

CONCLUSION

Applicant submits that the above amendments and remarks place the pending claims in a condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

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FITCH, EVEN, TABIN & FLANNERY
120 S. LaSalle Street, Suite 1600
Chicago, IL 60603
Telephone: (312) 577-7000
Facsimile: (312) 577-7007

Respectfully submitted,
Fitch, Even, Tabin & Flannery

/Amanda L. Lowerre/
Amanda L. Lowerre
Registration No. 58,759